



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

301 East Fourth Street
Suite 3500, Great American Tower
Cincinnati, OH 45202

513-723-4000 | www.vorys.com

Founded 1909

Glenn V. Whitaker
Direct Dial (513) 723-4608
Direct Fax (513) 852-8450
Email gwhitaker@vorys.com

March 19, 2013

VIA HAND DELIVERY AND
E-MAIL (JOHN.CURP@CINCINNATI-OH.ORG)

John P. Curp, Esq.
City Solicitor
City of Cincinnati Law Department
214 City Hall
801 Plum Street
Cincinnati OH 45202

Re: The Fair Housing Act and Anna Louise Inn

Dear Mr. Curp:

I write on behalf of Western & Southern Financial Group ("W&S") to convey W&S's concern that the City of Cincinnati's funding of the proposed renovations to the Anna Louise Inn ("ALI") will expose the City to significant liability. Specifically, it has come to our attention that certain City officials, as well as senior management of Cincinnati Union Bethel ("CUB"), the owner of ALI, have been aware since 2009 that, if the proposed renovations are completed, ALI's female-only policy will place ALI in violation of the federal Fair Housing Act (the "FHA"). Over the past several years, CUB has consistently made statements in public and in its litigation with W&S, that ALI's goal is to simply continue to provide housing exclusively to women in need. Based on the information we have learned, the City's approval, distribution and disbursement of funds for the proposed ALI renovations, while knowing that CUB's plans would discriminate on the basis of gender, will expose the City to liability under both the federal False Claims Act and the FHA.

We share this with you because—no matter where one stands on whether ALI's renovations comply with Cincinnati's Zoning Code—it is in the public interest for the City to avoid a lawsuit that could lead to a significant payout in today's budget environment.

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ALI's Tax Credit Financing

In 2009, after repeated attempts to sell ALI to a third party developer failed, CUB turned to the Model Group, a Cincinnati-area low income housing developer, to apply for federal tax credits in order to renovate its building. With Model Group's help, in 2010, CUB was awarded \$12.6 million in federal tax credits and dollars disbursed by the City and the State of Ohio (through the Ohio Housing Finance Agency) to renovate ALI into 85 permanent supportive housing units, for single women only.

In 2011, after W&S was made aware of the award of federal tax credits, and after CUB declined overtures from W&S to discuss a sale of ALI, W&S filed a suit, noting that CUB's plans do not comply with the Cincinnati Zoning Code. Since that time, two courts have agreed with W&S that CUB and the City failed to follow appropriate procedures in approving ALI's proposed renovation under the Cincinnati Zoning Code. *See State ex rel. 506 Phelps Holdings, LLC v. Cincinnati Union Bethel*, 2013 Ohio 388 (Ohio Ct. App. Feb. 8, 2013) (affirming the trial court's decision reversing the Cincinnati Zoning Board of Appeals' decision affirming the issuance of a building permit and certification of appropriateness to CUB). As a result, the Court has required the City and CUB to redo the zoning process for a third time.

ALI and the Fair Housing Act

The Fair Housing Act has been one of nation's most important tools for fighting discriminatory housing practices. In relevant part, the FHA makes it unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, *sex*, familial status, or national origin." 42 U.S.C. § 3604(a) (emphasis added). Contrary to this statute, ALI's stated policy is to exclude adult males from residing at ALI in support of its mission to "provide[] affordable housing for women." Exhibit A, ALI Info Sheet.

Pursuant to precedent from the United States Court of Appeals for the Sixth Circuit, ALI's policy of excluding adult males is facially discriminatory and establishes a prima facie case of disparate treatment under the FHA. *See Larkin v. Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 289-290 (6th Cir. 1996); *see also Community House, Inc. v. City of Boise*, 490 F.3d 1041, 1050 (9th Cir. 2007).¹ Accordingly, if faced with a suit under the FHA, the defendant would be faced with the burden to "justify" ALI's discriminatory policy. *Larkin*, 89 F.3d at 290.

¹ Courts have consistently held that a shelter or supportive housing is a "dwelling" subject to the FHA. *See, e.g., Community House*, 490 F.3d at 1048 n. 2 (holding that a homeless shelter is a "dwelling"); *Woods v. Foster*, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995) (same). There is no

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To be justified, ALI could not argue that its policy is well-intentioned. *See Larkin*, 89 F.3d at 290 (“[T]he absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect.”). Instead, ALI’s policy would need to either benefit men (which it does not), or be based on legitimate safety concerns. *See id.* And any safety concerns proffered by ALI could not be “based upon unsupported stereotypes or upon prejudice and fear stemming from ignorance or generalizations.” *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1504 (10th Cir. 1995); *see also Larkin*, 89 F.3d at 290.

In its present form, ALI’s single-sex policy may be arguably justified based on privacy and safety concerns, because ALI currently features dormitory-style units with shared bathrooms, and week to week licenses.² But CUB has proposed, and its federal funding requires it, to convert the residences into “[l]arger units with private bathrooms and kitchens,” and has made clear that it will nonetheless continue to exclude adult males. Exhibit A, ALI Info Sheet (“The mission at [ALI] will not change, however, there will be an increased focus on Permanent Supportive Housing meaning that women will be even more likely to be stable, long-term residents.”). A conversion to residences with private bathroom facilities will certainly violate the FHA, because ALI will be unable to justify its facially discriminatory policy. *See, e.g. Community House*, 490 F.3d at 1051 n.6 (“The City does not proffer a privacy justification because Community House provides separate rooms.”). And it is clear from the recent deposition of Steve MacConnell, President of CUB, the owner of ALI, that CUB has been aware that their policy would violate the FHA if the renovations are completed. *See Exhibit B, Excerpt of MacConnell Dep.*

Unfortunately, this exposure to liability would not be limited to ALI. It has come to our attention that some City officials, including Michael Cervay, City Development Director, have been aware since at least February 2009 that ALI’s proposed renovations, coupled with its policy of excluding adult males, will violate the FHA. *See Exhibit C, City FHA Emails* Specifically, Mr. Cervay asked representatives from the United Way of Greater Cincinnati and the United States Department of Housing and Urban Development (“HUD”), whether federal funds could be used for housing that excludes residents on the basis of gender. Both

doubt that ALI is a dwelling because “[h]alf the residents have lived at the [ALI] for over a year, some up to 30 years.” Exhibit A, ALI Info Sheet.

² *See, e.g. Sierra v. City of New York*, 579 F. Supp.2d 543, 551 (S.D.N.Y. 2008) (holding that policy excluding children under sixteen from residing in a building with shared bathroom facilities was justifiable where the city “produced extensive evidence demonstrating concrete physical and psychological effects...on children.”); *see also Community House*, 490 F.3d at 1051 n. 6 (“Depending on the facility, men or women-only shelters might be justified by privacy concerns.”).

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representatives responded by advising Mr. Cervay that the FHA would prohibit discrimination on the basis of gender if the housing includes private bathrooms. *See id.* ("If a facility offers full separate apartments, it would need to accept men and women.").

Despite HUD's confirming that ALI could not discriminate on the basis of gender once renovated, City Council passed an emergency ordinance to approve millions in federal funds for CUB's renovation. The City and ALI then executed a form HUD Development Agreement that deleted standard prohibitions against discriminating based on gender. *See* Exhibit D, HUD Agreement Excerpt, Section 31.

Quite simply, we believe that CUB and the City's knowledge that CUB's planned renovations would violate the Fair Housing Act exposes the City to significant liability.

Liability Under the False Claims Act

The False Claims Act (the "FCA") permits the federal government, or a relator suing on behalf of the federal government, to file suit against an individual or entity who, among other things, (1) "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," or (2) "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. §§ 3729 (a)(1)(A)-(B). A successful suit under the FCA can have severe consequences for the defendant, as the statute permits the recovery of **treble damages**, penalties and costs. *See id.* §§ 3729 (a)(1), 3729(a)(3).

In the Sixth Circuit, "[a] false statement can be shown to have been made by an express false certification, or through the so-called implied certification theory, which holds a defendant liable for violating the continuing duty to comply with the regulations on which payment is conditioned." *United States ex rel. Wall v. Circle C. Constr., L.L.C.*, 697 F.3d 345, 356 (6th Cir. 2012) (citation and internal quotation marks omitted). The concern here is that, in receiving and administering funds from HUD, local governments expressly or impliedly make certain certifications that they will administer funds in compliance with the FHA, or that a particular project complies with the FHA. Thus, where such a certification is made but found to be false, a claim may be brought under the FCA.

By way of example, a suit under the FCA was recently brought against Westchester County, New York, where the County had certified to HUD that it would administer funds in conformity with the FHA and "affirmatively further fair housing." *See United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester Cnty., N.Y.*, 668 F. Supp. 2d 548, 551 (S.D.N.Y. 2009). The FCA suit against the County alleged that these certifications were false, and the court agreed, granting a motion for partial summary judgment to the relator, concluding that false claims had been submitted for payment to the government. *See id.* at 570-

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571 (finding also that there was a genuine issue of material fact as to whether the County knew the certifications were false). Following the court's decision, Westchester County settled the suit, and agreed to pay the federal government **\$30 million**. See Exhibit E, DOJ Press Release.

Here, we are concerned that, to the extent that City has made similar certifications to HUD, the City is exposed to liability under the FCA. Our concern is particularly heightened because of the evidence that some City officials have been aware that ALI's plans would violate the FHA since at least February 2009. See Exhibit C, City FHA Emails.

Liability Under the Fair Housing Act

The City's exposure to liability goes beyond just the FCA. As described above, ALI's renovations plans are in contravention to the FHA. The City's knowledge of this problem, and its decision to nonetheless fund the project and remove the FHA prohibition against gender discrimination from the HUD funding agreement, could equally expose the City to liability under the FHA. Further exposure to liability exists with the most recent round of zoning hearings for ALI, in which the Historic Conservation Board placed a zoning restriction on ALI that limits it to 85 women-only residents. The City's Zoning Board of Appeals affirmed that condition in its subsequent ruling.

Federal courts have held that the language of 42 U.S.C. § 3604 is so expansive that "Congress intended § 3604 to reach a broad range of activities that have the effect of denying housing opportunities to a member of a protected class." *Mich. Protection & Advocacy Serv. v. Babin*, 18 F.3d 337, 344 (6th Cir. 1994).

For example, in *Community House*, the plaintiffs sued the City of Boise and officials who leased a shelter to an organization that planned to operate a men-only homeless shelter. See 490 F.3d at 1049. The Ninth Circuit held that the plaintiffs "established a prima facie case of facial discrimination under the Fair Housing Act because they have explicitly been excluded from Community House based on their gender and familial status." *Id.* at 1050. On remand, the case went to trial, and a jury ultimately ordered the city to pay **\$1 million** to the plaintiffs. See Exhibit F, Boise Article. Additionally, the plaintiff's attorneys are seeking fees and costs totaling nearly **\$1.9 million**. See *id.*

The concern here is that, by knowingly funding ALI's proposed renovations and imposing women-only zoning conditions, both of which would result in a necessarily discriminatory housing development, the City would be exposed to liability under the FHA because it has interfered with male citizens' rights under the FHA. Again, we are particularly concerned because certain City officials involved in the approval of the project had knowledge that the project would violate the FHA. See Exhibit C, City FHA Emails.

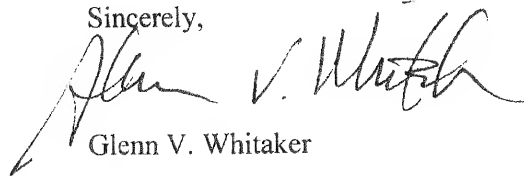
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Conclusion

In conclusion, the City's funding of ALI and its imposition of non-gender neutral zoning conditions will expose the City to liability, and could lead the City to pay out millions in damages (and more in attorney fees). Why would the City undertake such risk?³

Regardless of motives, in light of ALI's plans to operate in violation of the FHA, we urge the City to reconsider its decision to disburse federal funds toward the renovation of ALI. To do otherwise would be disastrous for the City and all taxpayers given the City's current budget situation.

Sincerely,



Glenn V. Whitaker

Enclosures

cc: Jonathan D. Niemeyer, Esq.
Eric W. Richardson, Esq.

³ And, why would City leaders, 3CDC, Greater Cincinnati Homeless Coalition and the Model Group support moving the Drop Inn Center, City Gospel Mission and the YMCA to enable the revitalization of Washington Park, and agree to move the residents of the Metropole in order to pave the way for the new upscale 21C Hotel, while at the same time vehemently opposing any redevelopment of ALI by W&S?

We have learned that in 2010, City leaders, including Roxanne Qualls, the Model Group, 3CDC and others, discussed moving low income residents from the Metropole to ALI in order to settle protracted litigation with the Homeless Coalition and other parties. Emails acquired through discovery reveal that 3CDC and Model Group officials, as well as Roxanne Qualls, openly discussed Model Group's ability to relocate Housing Assistance Payment (HAP) contracts to ALI. In fact, one email stream dated from June of 2010 from Steve Smith at Model Group to Adam Gelter at 3CDC states that "the biggest outstanding issue is whether or not we can move HAP contracts to Anna Louise Inn since they are SRO's [sic]". Apparently there was an agreement to pave the way for Metropole residents to be moved in favor of the 21C Hotel redevelopment which involved ALI accepting HAP vouchers and remaining in the downtown core. Could this explain the City's efforts to pass an emergency ordinance to approve ALI's financing? Could this explain why the City has failed to address the Fair Housing Act issues presented by the proposed ALI renovations?



INFORMATION SHEET: ANNA LOUISE INN

Cincinnati Union Bethel is pleased to announce an award of tax credits from the Ohio Housing Finance Agency. The Anna Louise Inn secured the top ranking in a competitive Permanent Supportive Housing category in Ohio. This award will help provide a complete renovation of the Anna Louise Inn and allow our mission to continue as it has for over 100 years in its Lytle Street location.

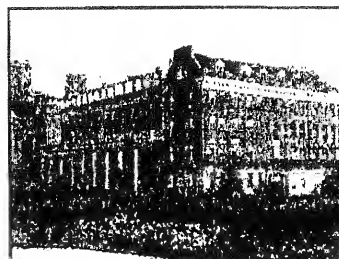
Our mission is to provide supportive services and education that assist urban women, children, families, and communities to realize their greatest potential.

Renovation Summary:

- **Total Renovation Cost:** \$12.4 million
- **Construction Schedule:** Summer 2011 through Fall 2012
- **Development Team:** Cincinnati Union Bethel and Over-the-Rhine Community Housing
- **Supportive Services:** Greater Cincinnati Behavioral Health Services

Anna Louise Inn Facts:

- Cincinnati Union Bethel is celebrating its 180th anniversary this year
- Since it was constructed in 1909, The Anna Louise Inn has provided affordable housing for women
- Since 1994, the Family Living Center has been located at the Inn providing transitional housing for homeless families/children and has been directed by Mercy Franciscan since 2004
- The *Off the Streets*SM program, a collaboration of over 25 agencies/partners has provided housing and services for women in recovery from prostitution since 2006
- Cincinnati Union Bethel's administrative offices are located in the building
- Half of the residents have lived at the Inn for over a year, some up to 30 years
- The remaining residents have lived at the Inn for less than a year during transitional periods in their lives, often as an alternative to homelessness
- Many of the current residents have had drug abuse and/or mental health issues and receive case management services in the community, while quietly living safely at the Inn



Statistics: Current vs. After Renovation

	CURRENT		AFTER RENOVATION
	Capacity	Current Occupancy	Capacity
Inn Residents	193	106	85
Family Living Center Residents	42	42	42
<i>Off the Streets</i> SM Residents	25	15	25
Total Residents	260	163	152
	Small dormitory-style units with shared bathrooms and dining.		Larger units with private bathrooms and kitchens.

Conclusion:

- The mission at the Inn will not change, however, there will be an increased focus on Permanent Supportive Housing meaning that the women will be even more likely to be stable, long-term residents
- The size of the population served after the renovation will be less than the current population
- The Inn has been a good neighbor for over 100 years and will continue to do so
- The renovation will be in compliance with all local and federal historic preservation requirements
- Cincinnati Union Bethel and its partners thank you for your continued support and we look forward to continuing our mission in a manner that respects the Cincinnati community and our neighbors

EXHIBIT A

1 it?

2 A. It did not.

3 Q. Has -- has this contract been
4 supplemented or amended since then?

5 A. It has.

6 Q. What's the current loan closing
7 date?

8 A. I don't recall but I signed an
9 extension approximately one or one and a half
10 months ago.

11 Q. And what does that extend the
12 closing date to?

13 A. I believe it was a six month
14 extension so it would have been to possibly
15 July 1, in that area.

16 Q. Is it -- is -- do you have any
17 understanding, Mr. MacConnell, that the city
18 is limited in the number of extensions it can
19 give on the loan closing date or is it
20 unlimited?

21 A. I don't know.

22 Q. Look on page nine.

23 A. Page --

24 Q. Section 31 titled Discrimination

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EXHIBIT B

1 against Persons Receiving Government Housing
2 Assistance is Prohibited. During the
3 Affordability Period, the Owner shall comply
4 with the following terms and conditions. A,
5 not to refuse rent, lease, or otherwise deny
6 to or withhold the Property from any
7 individual because of race, color, religion
8 or natural orien -- origin of an individual
9 who would reside in the Property and, B, not
10 to refuse to rent or lease the Property to an
11 individual because the individual has
12 children who would reside in the Property.
13 You see that?

14 A. I do.

15 Q. Do you also have some
16 understanding that, by virtue of those
17 provisions, you cannot limit this, the
18 residency population of the Anna Louise Inn,
19 to single women?

20 A. My understanding is that we
21 would comply with the contract terms.

22 Q. Does that mean you understand
23 you cannot limit it, the residency, to single
24 women?

1 A. I see that language and it is
2 referring to children so, let's see, so that
3 would be a contract term, it appears, that we
4 would comply with.

5 Q. Didn't you also understand, from
6 discussions internally, that the OHFA money
7 would also be restricted in the sense that
8 you, by virtue of expanding these units from
9 SROs to efficiencies, you could not
10 discriminate against men if they chose to
11 apply?

12 A. I did understand that.

13 Q. Do you understand that today?

14 A. I think that that's true.

15 Q. So, as you sit here, if -- if
16 the renovation's completed and a low income
17 qualifying male or a family with children
18 applies for one of those efficiencies and
19 they otherwise meet that criteria, you have
20 to rent it to them, don't you?

21 A. Let's put it this way. We would
22 not discriminate based on any of those
23 factors.

24 Q. So to the extent that the Anna

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1 Louise Inn has been promoted as a safe haven
2 for women or women in -- at risk or women who
3 need sanctuary, that could all not be true
4 tomorrow or the next day once the
5 renovation's completed, right?

6 A. Well, it -- as you'll recall
7 from my testimony yesterday, the project of
8 renovation of the Anna Louise Inn was part of
9 an overall council mandate that there be a
10 plan for the Homeless to Homes project of
11 persons of all sex, race, and so forth and --
12 and level of income. The Anna Louise Inn was
13 part of that project as affordable housing
14 for women. That was the purpose.

15 Q. But if -- if -- but based upon
16 where you received the money, meaning OHFA
17 and the city through this HUD fund, and the
18 requirement that in order to use those funds
19 you have to open it up to anyone who
20 qualifies regardless of gender and regardless
21 of whether they have children, you cannot
22 commit that these women will have a safe
23 haven exclusively to themselves, can you?

24 A. Again, my answer would be the

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1 same, that it was part of an overall project
2 initiated by city council and the Anna Louise
3 Inn was designated as affordable housing for
4 women.

5 Q. So is it -- is it -- by virtue
6 of that designation are you telling me that
7 that trumps the HUD -- HUD requirement that I
8 just read to you in -- in paragraph 31?

9 A. I don't know that but I -- I
10 don't think that it would trump the HUD
11 qualification unless there was some sort of
12 exemption or waiver.

13 Q. And you, do you recall, Mr.
14 MacConnell, the public hearing that preceded
15 city council's formal vote on the contract
16 that we previously looked at? You were
17 there, weren't you?

18 A. That passed this ordinance?

19 Q. Well, actually it's -- it's the
20 former -- it's the vote that they took
21 permitting the city to sign the actual
22 contract. Remember the public hearing, I
23 think, was on the 24th?

24 A. I think there were two instances

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1 where there was public debate. One was my --
2 at the finance committee and a week later at
3 the full council meeting. All of coun --
4 council persons are on the finance committee
5 so the -- the vote was unanimous at the
6 finance committee on -- and the vote on the
7 ordinance, which would -- would have been a
8 week later, was unanimous with the exception
9 of, it looks like, Mr. Berding.

10 Q. Do you remember at the hearing
11 either telling city council or having Model
12 Group tell city council that one of the --
13 one of the benefits of this renovation was
14 that it would provide essentially a safe
15 haven for women?

16 A. Yes.

17 Q. And in light of what we've
18 discussed that's not entirely true, is it?

19 A. That was the purpose of the
20 renovation in terms of the body of the
21 Homeless to Homes project which had a number
22 of components for it and the renovation of
23 the Anna Louise Inn, what was for affordable
24 housing for women.

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1 be --

2 MR. KAMP: She says 27. She's
3 the official numberer.

4 (Exhibit 27 was marked.)

5 Q. Mr. MacConnell, I've handed you
6 Exhibit 27 --

7 A. Yes.

8 Q. -- which is an e-mail string
9 between somebody named Elizabeth Brown and
10 Michael Cervay?

11 A. Yes.

12 Q. Michael Cervay is the
13 development director for the city?

14 A. He is.

15 Q. And who is Elizabeth Brown, if
16 you know?

17 A. She has a United Way e-mail and
18 so I, I -- I presume that this Elizabeth
19 Brown was with United Way.

20 Q. Any idea, given your prior
21 testimony, how Michael Cervay was involved in
22 discussing the use of federal funds for Anna
23 Louise Inn on February 9, 2009 when I
24 understood the first consideration of that

1 was June or July?

2 A. I don't know that.

3 Q. And I think your recollection
4 previously was that the city, in terms of
5 involving the 2.6 million in HUD funds, was
6 not involved until August, September 2010; is
7 that right?

8 A. That was my understanding. It
9 appears that, at least to the extent that
10 this e-mail chain occurred, Michael Cervay
11 was responding in February 10th of '09.

12 Q. And you recognize subjects as
13 Anna Louise Inn, right? You see where I'm
14 referring, Mr. MacConnell? I said subject is
15 Anna Louise Inn?

16 A. Yes.

17 Q. And in the bottom one, which
18 precedes the top one, it says, Elizabeth, are
19 you aware if there's a fair housing issue
20 with using federal funds for a facility that
21 serves a gender-specific clientele such as
22 this? And she answers at the top, the same
23 day, well, maybe the next day, I can't tell,
24 Michael, it is my understanding that the Anna

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1 Louise operates as a rooming house or SRO
2 with no kitchens in the rooms and mostly
3 shared bathrooms. If that is the case, it
4 would not be an illegal gender
5 discrimination. If a facility offers full
6 separate apartments it would need to accept
7 men and women. There was a case involving
8 non-profit housing for single mothers where
9 they had to open it up to single fathers.
10 You see that?

11 A. I do.

12 Q. Assuming this was shared with
13 Model Group and CUB and the other people
14 involved in pursuing the OHFA and city
15 financing it would have been a
16 misrepresentation to tell those agencies that
17 you guys qual -- that you guys were going to
18 use the funds exclusively for women, true?

19 A. Not at all. I'm -- I'm not sure
20 that -- this -- this correspondence between
21 Mr. Cervay and Ms. Brown does not, to my
22 knowledge, relate to our renovation but, of
23 course, I'm not sure about that because I'm
24 not -- I'm not the author nor the recipient.

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1 Q. Well, if the new facility offers
2 full separate apartments, meaning kitchens
3 and bathrooms, that would be consistent with
4 the anticipated renovation, wouldn't it?

5 A. I'm, you know, I'm just not
6 sure.

7 Q. All right.
8 (Exhibit 28 was marked.)

9 Q. Mr. MacConnell, I've handed you
10 28? Exhibit 28. We've -- this -- this is
11 out of the OHFA application and it lists the
12 -- how the money's going to get spent. Do
13 you see that?

14 A. I do see the pro forma and I
15 don't know that this is out of the OHFA
16 application, but I believe you if you say
17 that it is.

18 Q. Well, regardless, did you have
19 anything to do with preparing this pro forma?

20 A. No, I didn't.

21 Q. And I've asked you about the
22 developer's fee, which is on the right, of a
23 million five. That would have been payable
24 to Model Group, and I -- I'm not going to ask

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Cervay, Michael

From: Elizabeth Brown [Elizabeth.Brown@uwgc.org]
Sent: Tuesday, February 10, 2009 9:00 AM
To: Cervay, Michael
Subject: RE: Anna Louise Inn

Michael,

It is my understanding that the Anna Louise operates as a rooming house or SRO, with no kitchens in the rooms and mostly shared bathrooms. If that is the case, it would not be illegal gender discrimination. If a facility offers full separate apartments, it would need to accept men and women. There was a case involving nonprofit housing for single mothers where they had to open it to single fathers.

Elizabeth

PS I am speaking this evening at the Planning Commission hearing on the zoning changes for social services to say that I believe the proposed restrictions on shelters and supportive housing are illegal housing discrimination against people with disabilities. What a mess!

From: Cervay, Michael [mailto:Michael.Cervay@cincinnati-oh.gov]
Sent: Monday, February 09, 2009 5:45 PM
To: Elizabeth Brown
Subject: Anna Louise Inn

Elizabeth - Are you aware if there is a fair housing issue with using federal funds for a facility that serves a gender specific clientele such as this?

Michael L. Cervay, Director
Department of Community Development
City of Cincinnati
805 Central Avenue - Suite 700
Cincinnati OH 45202
(513) 352 - 1947

Cervay, Michael

From: Cunningham, James A [JAMES.ACUNNINGHAM@hud.gov]
Sent: Tuesday, February 10, 2009 10:32 AM
To: Cervay, Michael
Co: Michelle Budzek
Subject: RE: anna louise inn?



image001.jpg

Fair Housing Act Prohibitions on Discrimination Based On Sex

In general, the Fair Housing Act prohibits housing providers from limiting access to their housing program based upon sex. However, housing may be limited to one sex where, because of the physical limitations or configuration of the housing facility, considerations of personal privacy or personal safety would make it inappropriate for the facility to be made available to members of both sexes. For example, it would not be a violation of the Fair Housing Act for units with shared bathing or sleeping facilities to be limited to one sex.

From: Cervay, Michael [mailto:Michael.Cervay@cincinnati-oh.gov]
Sent: Monday, February 09, 2009 5:43 PM
To: Cunningham, James A
Co: Michelle Budzek
Subject: RE: anna louise inn?

Jim - Is there a fair housing issue with using Federal funds for a facility that is restricted by gender?

-----Original Message-----

From: Michelle Budzek [mailto:mbudzek@partnershipcenter.net]
Sent: Monday, February 09, 2009 12:07 PM
To: Blaine Brockman; Christine Buchholz; Jim Cunningham; Mary Burke; Cervay, Michael; Steve Smith
Co: Mary Carol Melton
Subject: anna louise inn?

TH/PSH Committee

I just had a call from Mary Carol Melton at Anna Louise Inn. She has been on the HTH women's committee and is on top of what we are trying to do. She said Cincinnati Union Bethel (the owner of the Inn) would very much like to do the Transitional Housing for women in their facility. In order to do that they would need a huge infusion of capital (probably a \$6M rehab...by their rough estimates) and then of course the operating for the units that would be TH.

What do you think -

1. Steve/Blaine -- Is this a tax credit deal? Should we begin to prep them for this round?
2. Should we "name the provider"....the work on the shelters is going out as RFP's but I'm not sure that's the same with THPSH. Your thoughts?

FYI - Brief info on the Inn - clipped from <http://www.cincinnatiunionbethel.org/housing/>

<http://www.cincinnatiunionbethel.org/housing/ALI%20small%20file%20size%20b&w.jpg>

The Anna Louise Inn was opened and dedicated on Memorial Day, 1909. Operating strictly on a nonprofit basis, the Inn was filled to occupancy on its first day. It offered working young women, who had come to Cincinnati seeking employment from various rural areas, both security and affordable housing. In turn, the residents of the Inn proved self-sustaining to the general work of CUB, providing ample work to the health service workers and promoting the image of the organization through their activities in the surrounding neighborhood. As proof of the success of the Inn, an extension was built onto the structure following the close of World War I.

A home to women and families in transition since 1909, the Anna Louise Inn boasts affordable rent, over 180 furnished single rooms, a secured historic building, and a caring community.

Rooms at ALI are dormitory style, with an onsite dining room, vending room, coin-operated laundry, and television lounges. Rooms are set up to host air conditioners and a small refrigerator, available to residents for a nominal fee.

In addition to housing for women in transition, the Anna Louise Inn, in collaboration with Mercy Franciscan at St. John, also hosts homeless families with children in its Family Living Center.

Michelle Budzak

2260 Park Avenue * Suite 402 * Cincinnati, OH 45206-2755

Phone: 513-891-4016 x 11

Fax: 513-354-6688



Contract No: _____
Property Address: 300 Lytle Street, Cincinnati, Ohio 45202

**The United States
Department of Housing and
Urban Development
and
The City of Cincinnati**

**HOME Investment Partnerships Program
Funding Agreement**

**Between
The City of Cincinnati
and
Anna Louise Inn, Limited Partnership**

**Home Investment Partnerships Program
Funding Agreement**

Background

- A. Title II of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, 42 U.S.C. § 12701 et seq., as amended (the "Housing Act"), authorizes the HOME Investment Partnerships Program (the "HOME Program").
- B. The general purpose of the HOME Program is to strengthen public-private partnerships in order to expand the supply of decent, safe, sanitary and affordable housing for very low-income and low-income Americans.
- C. The U.S. Department of Housing and Urban Development ("HUD") has designated the City of Cincinnati, an Ohio municipal corporation (the "City"), a participating jurisdiction in the HOME Program pursuant to 24 C.F.R. § 92.105.
- D. Anna Louise Inn, Limited Partnership, an Ohio limited partnership (the "Owner"), has agreed to use HOME Funds to rehabilitate eighty-five (85) residential rental dwelling units (the "Units") to provide decent, safe, sanitary and affordable housing for very low-income and low-income persons within the corporate boundaries of the City of Cincinnati (such rehabilitation, the "Project").
- E. The Owner represents to the City that, as of the date hereof, no tenants have been forced to move from the Property (defined below) in anticipation of this Home Investment Partnerships Program Funding Agreement (this "Agreement") or the rehabilitation funded by the City pursuant to the terms of this Agreement.
- F. The Owner shall deliver to the City a fully completed occupancy questionnaire, substantially in the form of Exhibit A ("Occupancy Questionnaire") attached hereto, as provided in Section 12 below.
- G. The Owner has committed to having all HOME assisted units in the Project initially occupied after rehabilitation by lower income families at affordable rents under the criteria set forth in Exhibit B ("Tenant Income & Rent Guidelines Worksheet") attached hereto. The City shall supply the Owner with updated income guidelines as they occur.
- H. Ordinance No. 410-2010 authorizes the City Manager to execute this Agreement.

In consideration of the promises made in this Agreement, the City and the Owner agree:

Section 1. The Property. The Units are located at 300 Lytle Street, Cincinnati, Ohio 45202, as more particularly described in Exhibit C ("Legal Description") attached hereto (the "Property").

Section 2. The Project. The Owner shall rehabilitate the Units as set forth in Exhibit D ("Statement of Work and Budget") attached hereto. After rehabilitation, twenty-five [] of the eighty-five (85) Units shall be designated Low HOME Units. These units shall be fixed as defined by 24 C.F.R. § 92.252(j) and included in Exhibit D. The Owner shall enter into a general construction contract with a general contractor experienced in the rehabilitation of residential buildings to carry out all work specified in the Statement of Work and Budget, and the Owner shall obtain and pay for all necessary permits and licenses. The Owner shall submit the general construction contract to the City prior to its execution by

offices at least ten (10) days prior to renting such unit to a person who is not a recipient of government housing allowance assistance. If twenty-five (25%) percent of the residential rental units located on the Property are already rented to recipients of government housing assistance at the time that a vacancy occurs, the Owner need not Affirmatively Market the availability of any additional available residential rental units to government housing allowance recipients. This provision shall not be construed to limit the amount of rent that may be charged for such units.

Section 31. Discrimination against Persons Receiving Government Housing Assistance is Prohibited. During the Affordability Period, the Owner shall comply with the following terms and conditions:

- (a) Not to refuse to rent, lease, or otherwise deny to or withhold the Property from an individual because of the race, color, religion, or national origin of an individual who would reside in the Property;
- (b) Not to refuse to rent or lease the Property to an individual because that individual has children who would reside in the Property;
- (c) Not to refuse to rent or lease the Property to an individual because that individual receives or is eligible for federal, state or local housing assistance;
- (d) To advertise all vacancies in the appropriate local media, mentioning Equal Housing Opportunities and the eligibility for the residence of Section 8 tenants;
- (e) To inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, churches, employment centers, fair housing groups, or housing counseling agencies);
- (f) To notify Housing Opportunities Made Equal ("H.O.M.E.") when a residential unit becomes available to lease and to accept applications from persons referred by H.O.M.E.; and
- (g) To keep on file all vacancy advertisements and solicitations (the Owner shall forward copies upon request to the City so that the Owner's Affirmative Marketing practices may be assessed).

Section 32. Compliance with Laws, Regulations and Programs. The Owner shall comply with the following terms and conditions:

- (a) Generally. The Owner shall comply with all applicable statutes, ordinances, regulations and rules of the City of Cincinnati, Hamilton County, the State of Ohio and the United States while performing its obligations under this Agreement.
- (b) Small Business Enterprise Program.
 - (1) The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in CMC § 323-1-S, "SBEs"). Pursuant to CMC § 323-7, the City's annual goal for SBE participation shall be thirty (30%) percent of the City's total dollars spent for construction (as such term is defined in CMC § 323-1-C3), supplies (as such term is defined in CMC § 323-1-S2), services (as such term is defined in CMC § 323-1-S1) and professional services (as such term is defined in CMC § 323-1-P). Accordingly, the Owner shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty (30%) percent SBE participation. A list of SBEs may be obtained from the City's Office of Contract Compliance. The Owner may refer interested firms to the City's Office of Contract Compliance for review and possible certification as an SBE. The Owner shall comply with the

provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
 - (ii) Assuring that SBEs are solicited whenever they are potential sources. The Owner must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials, or to bid on construction contracts, as applicable.
 - (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
 - (iv) If any subcontracts are to be let, the Owner shall require the general contractor (if different from the Owner) to take the above affirmative steps.
 - (v) Prior to the commencement of work under any subcontracts, the Owner shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Owner shall update the report monthly.
 - (vi) The Owner shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.
- (2) Failure of the Owner or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Owner to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC § 323-99 are hereby incorporated by reference into this Agreement.
 - (3) Details concerning the SBE Program can be obtained from the City's Office of Contract Compliance, Two Centennial Plaza, 805 Central Avenue, Suite 222, Cincinnati, Ohio 45202, (513) 352-3144.
- (c) Equal Employment Opportunity.
- (1) The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Owner shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action includes, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Owner shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
 - (2) The Owner shall, in all solicitations or advertisements for employees placed by or on behalf of the Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (3) The Owner shall send to each labor union or representative or workers with which the Owner has a collective bargaining agreement or other contract or

- understanding, a notice, to be provided, advising the labor union or workers' representative of the Owner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and to post copies of the notice in conspicuous places available to employees and applications for employees.
- (4) The Owner shall comply with all provisions of Executive Order 11246 of September 24, 1965, and with the relevant rules, regulations, and orders of the Secretary of Labor.
 - (5) The Owner shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Housing and Urban Development pursuant thereto, and to permit access to the Owner's books, records, and accounts by the City, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - (6) In the event of the Owner's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Owner may be declared ineligible for further government contracts or federally assisted construction contracts, loans, or grants in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (7) The Owner shall include the provisions of subsections (1) through (7) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor. The Owner shall take such action with respect to any construction contract, subcontract, or purchase order as the City or the Department of Housing and Urban Development may direct as a means of enforcing such provision, including sanctions for noncompliance; provided, however, that in the event the Owner becomes involved in, or is threatened with litigation with a contractor, subcontractor, or vendor as a result of such direction by the City or the Department of Housing and Urban Development, the Owner may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the term "Owner" shall be changed to "Contractor."
 - (8) Contracts and subcontracts not exceeding \$10,000 are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the federal financial assistance governs. An agency, contractor or subcontractor may not procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: Provided that where a contractor has contracts or subcontracts with the government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000, the \$10,000 or under exemption does not apply, and the contracts are subject to the order and the regulations issued pursuant thereto regardless of whether any single contract exceeds \$10,000.

- (d) Meet and Confer. The Owner, prior to the Project Commencement Date and/or prior to any expenditure of the Funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by the Owner, shall meet and confer with the trade unions representing all of the crafts included in this redevelopment and minority, female and locally owned contractors and suppliers potentially involved in this redevelopment. At this meeting, the Owner shall make available copies of the scope of work, and if prevailing wage rates apply, the rates pertaining to all proposed work to or on the Property. Not later than ten (10) days following the Owner's meet and confer activity, the Owner shall provide to the City, in writing, a summary of the Owner's meet and confer activity.
- (e) SuperJobs Center Employment Postings. This Agreement is subject to the SuperJobs Center Employment Postings requirement established in City of Cincinnati Ordinance No. 238-2010, which requires that, to the extent allowable by law, the Developer shall use its best efforts to post available employment opportunities within the Developer's organization or the organization of any subcontractor working with the Developer with the SuperJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Business Services Unit Manager at 513-458-6599.
- (f) Minimum Wage. This Agreement is subject to the provisions of ORC § 4111.02 relating to minimum wage.
- (g) Competitive Negotiation/Written Plan. The Owner is responsible for ensuring that the general contractor evidences the use of competitive negotiation or bidding procedures. These negotiations are for the dual purposes of (i) ensuring the participation and employment of SBEs and (ii) controlling and reducing project costs. A written plan shall be developed and followed between the Owner and the general contractor, which plan shall assure affirmative steps to be taken in this regard. The Owner shall take all steps necessary to assure that the written plan is followed.
- (h) Certain Federal Laws and Regulations. The Owner, for itself and its successors and assigns, shall comply with the following federal laws and regulations during the Construction Period and the Compliance Period:
 - (1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101-6107.
 - (2) The prohibition of disability discrimination under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.
 - (3) The Federal Fair Housing Law, as amended, 42 U.S.C. §§ 3601-3619, with Executive Order 11063, and with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d).
 - (4) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended from time to time:
 - (i) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - (ii) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the 24 C.F.R. Part 135 regulations.

- (iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (iv) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- (v) The contractor will certify that any vacant employment positions, including training positions, that are filled (A) after the contractor is selected but before the contract is executed, and (B) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.
- (vi) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (vii) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (A) preference and opportunities for training and employment shall be given to Indians, and (B) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- (5) The regulations at 24 C.F.R. § 24 prohibiting the use of disbarred, suspended, or ineligible contractors or subrecipients.
- (6) The regulations at 24 C.F.R. § 92, HOME Investment Partnerships Program, applicable to owners of assisted housing.
- (7) The Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2).

Section 33. Prevailing Wage; Safety Standards. Unless the Project contains less than twelve (12) HOME units, all laborers and mechanics who are employed to do renovation, rehabilitation, or construction work at the Project are to be paid wages and be provided working conditions in

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

ANNA LOUISE INN, LIMITED PARTNERSHIP,
an Ohio limited partnership

By: ANNA LOUISE INN GP, LLC,
an Ohio limited liability company

By: Stephen T. MacConnell
Name: STEPHEN T. MACCONNELL
Title: Authorized Officer
Date: 11/8/2011

As authorized by corporate resolution dated 9/16, 2010

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____
Name: Milton Dohoney, Jr.
Title: City Manager
Date: _____

RECOMMENDED BY DEPARTMENT OF COMMUNITY DEVELOPMENT:

By: _____
Name: Michael L. Cervay
Title: Director

APPROVED AS TO FORM:

By: _____
Name: Jonathan D. Brodhag
Title: Assistant City Solicitor

APPROVED BY OFFICE OF CONTRACT COMPLIANCE:

By: _____
Name: Rochelle Thompson
Title: Contract Compliance Officer

CERTIFICATION OF FUNDS:

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
Name: Reginald Zeno
Title: Finance Director

EXHIBIT G

HOME INVESTMENT PARTNERSHIPS PROGRAM RESTRICTIVE COVENANT

Anna Louise Inn, Limited Partnership, an Ohio limited partnership (the "Owner"), its successors and assigns, in consideration of the promises made in that certain HOME Investment Partnerships Program Funding Agreement with the City of Cincinnati, an Ohio municipal corporation (the "City"), dated _____, 2010, for the rehabilitation of the property located at 300 Lytle Street, Cincinnati, Ohio 45202, as more particularly described in Exhibit A ("Legal Description") attached hereto (the "Property"), hereby covenants for the benefit of the City to hold the Property upon the following terms for the period beginning on the date of initial occupancy of the Property following completion of rehabilitation of the residential units to decent, safe and sanitary occupancy standards and ending on the fifteenth (15th) anniversary of such date (such period, the "Affordability Period"):

Section 1. Maintenance. The Owner shall complete the Project in compliance with the Cincinnati Building Code as set forth in Title XI of the Cincinnati Municipal Code (the "CMC") and the HUD Housing Quality Standards, and shall maintain the Property in compliance with such standards. The Owner shall pay special attention to preventive maintenance of the Property and purchase the materials, equipment, tools, appliances, supplies and services necessary for property maintenance and repair. The Owner shall systematically and promptly investigate all service requests from tenants and City officials, take action as may be justified and keep records of the same.

Section 2. Right to Inspect. The Owner shall permit the City to inspect the Property at reasonable times and with reasonable notice to the Owner.

Section 3. Occupancy by Lower Income Households at Affordable Rents.

- (a) The Owner shall rent one hundred (100%) percent of the rehabilitated dwelling units to women. For the period beginning on the Project Completion Date and ending on the fifteenth (15th) anniversary of the Project Completion Date (such period, the "Affordability Period"), the Owner shall rent each of the twenty-five (25) HOME assisted dwelling units to tenants with household incomes below fifty (50%) percent of the median family income for the Cincinnati-Middleton, OH-KY-IN HUD Metro Fair Market Rent Area. The household income shall be determined as of the time that the tenant initially occupies the Property, and the Owner shall verify such income, using third party source documentation supplied by the applicant, at least once every six (6) years during the Affordability Period. Additionally, the Owner shall re-certify the household income at the time of lease renewal or changes in income as provided by HUD. The Owner shall charge rents that do not exceed the Low HOME rents as defined in Section 2 above and in 24 C.F.R. § 92.252. The Owner shall comply with the provisions of this Section throughout the Affordability Period. The Low HOME rents for each unit in the Project are set forth in Exhibit B ("Tenant Income & Rent Guidelines Worksheet") attached hereto.
- (b) Any Low HOME tenant whose household income exceeds fifty (50%) percent of the median family income for the Cincinnati-Middleton, OH-KY-IN HUD Metro Fair Market Rent Area after initial income certification shall be permitted to continue renting his or her Low HOME Unit; provided, however, that if such tenant's household income exceeds eighty (80%) percent of the median family income for the Cincinnati-Middleton, OH-KY-IN HUD Metro Fair Market Rent Area, then such tenant shall be required to pay a monthly rental amount equal to the lesser of (i) the amount payable by the tenant under state or local law or (ii) thirty (30%) percent of the tenant's "adjusted income" (defined at

24 C.F.R. § 92.2); provided further, however, that if the Property has qualified for low income housing tax credits, such tenant must pay a monthly rental amount as governed by 26 U.S.C. 42. If a tenant's household income exceeds the eligibility limit, the Low HOME Unit shall continue to qualify as a Low HOME and/or low income housing tax credit unit; provided, however, that the Owner must rent the next available unit on the Property to a tenant with a household income below fifty (50%) percent of the median family income for the Cincinnati-Middleton, OH-KY-IN HUD Metro Fair Market Rent Area. The "next available unit" shall mean a unit of similar or larger size than the unit occupied by the tenant whose income has exceeded the Low HOME eligibility limit.

Section 4. Condominium Conversion. The Owner shall not convert any of the rehabilitated dwelling units in the Project to condominium ownership or to any form of cooperative ownership.

Section 5. Affirmative Marketing. The Owner shall Affirmatively Market (defined below) the availability of such units to government housing allowance recipients. For purposes herein, "Affirmatively Market" shall mean advertising the availability of a residential rental unit to government housing allowance recipients in a newspaper of general circulation throughout the City of Cincinnati and giving notice of availability to government housing assistance offices at least ten (10) days prior to renting such unit to a person who is not a recipient of government housing allowance assistance. If twenty-five (25%) percent of the residential rental units located on the Property are already rented to recipients of government housing assistance at the time that a vacancy occurs, the Owner need not Affirmatively Market the availability of any additional available residential rental units to government housing allowance recipients. This provision shall not be construed to limit the amount of rent that may be charged for such units.

Section 6. Discrimination against Persons Receiving Government Housing Assistance is Prohibited. The Owner shall comply with the following terms and conditions:

- (a) Not to refuse to rent, lease, or otherwise deny to or withhold the Property from an individual because of the race, color, religion, or national origin of an individual who would reside in the Property;
- (b) Not to refuse to rent or lease the Property to an individual because that individual has children who would reside in the Property;
- (c) Not to refuse to rent or lease the Property to an individual because that individual receives or is eligible for federal, state or local housing assistance;
- (d) To advertise all vacancies in the appropriate local media, mentioning Equal Housing Opportunities and the eligibility for the residence of Section 8 tenants;
- (e) To inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, churches, employment centers, fair housing groups, or housing counseling agencies);
- (f) To notify Housing Opportunities Made Equal ("H.O.M.E.") when a residential unit becomes available to lease and to accept applications from persons referred by H.O.M.E.; and
- (g) To keep on file all vacancy advertisements and solicitations (the Owner shall forward copies upon request to the City so that the Owner's Affirmative Marketing practices may be assessed).

Section 7. Compliance with Laws and Regulations. The Owner shall comply with the following federal laws and regulations:

- (a) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101-6107.



Department of Justice

Acting United States Attorney Lev L. Dassin
Southern District of New York

FOR IMMEDIATE RELEASE
MONDAY, AUGUST 10, 2009
WWW.USDOJ.GOV

CONTACT: YUSILL SCRIBNER
(212) 637-2600
(914) 933-1900

**WESTCHESTER COUNTY AGREES TO DEVELOP HUNDREDS OF
UNITS OF FAIR AND AFFORDABLE HOUSING IN
SETTLEMENT OF FEDERAL LAWSUIT**

Lev L. Dassin, the Acting United States Attorney for the Southern District of New York, and Tony West, the Assistant Attorney General for the Civil Division of the Department of Justice, announced today that Westchester County, N.Y., has agreed to ensure the development of 750 units of fair and affordable housing in areas with low racial and ethnic diversity in order to settle a lawsuit brought against it by the United States under the False Claims Act and Housing and Community Development Act. To implement the settlement, the County has agreed to expend \$30 million of County funds; to pay the United States an additional \$30 million, a substantial portion of which thereafter will be made available again to the County for housing development; and to submit to the oversight and enforcement authority of a court-appointed monitor. According to the Complaint filed by the United States in Manhattan federal court:

The Complaint

Westchester County receives Community Development Block Grants from the United States Department of Housing and Urban Development ("HUD"), on behalf of a consortium of municipalities within the County. As a condition of receiving such grants, the County, among other commitments, agrees to "affirmatively further fair housing." The commitment to affirmatively further fair housing requires more than simply building affordable housing; it also requires grant recipients to assure that the housing is fully available to all residents of the community, regardless of race, color, national origin, gender, handicap, or familial status.

To meet this obligation, the County was required to conduct an analysis of the

Exhibit E

impediments to fair housing choice, including impediments erected by racial and ethnic discrimination or segregation, and to take appropriate actions to overcome the effects of any such impediments. The County was aware that racial and ethnic segregation and discrimination persisted in its municipalities: according to the 2000 federal Census, over half of the County's municipalities had an African-American population of 3% or less, and in 1999 the County Board of Legislators found that there had been repeated instances of intolerance and discrimination in the County.

Despite that, the analyses of impediments that the County conducted between 2000 and 2008 made no mention of the housing needs of racial or ethnic minorities or the effects of racial or ethnic discrimination. Instead, the County focused on "impediments to affordable housing," with no identification of impediments to fair housing based on race or ethnic background or resulting from the effects of racial or ethnic segregation. In particular, the County did not analyze how its placement of affordable housing affected segregation, nor whether the placement of such housing had the effect of increasing or decreasing racial or ethnic diversity in the neighborhoods where the housing was built. Having failed to identify impediments to fair housing based on race or ethnicity, the County took no action designed to overcome those particular impediments. As a result, the County's production and placement of affordable housing may have perpetuated or increased racial and ethnic segregation in the area.

As part of its applications for funding under the HUD grant program, between 2000 and 2008 the County periodically certified that it was meeting its obligations to affirmatively further fair housing. The Complaint alleges that, due to the County's failure to identify and address impediments to fair housing, the County knew those certifications to be false, and therefore violated the False Claims Act. In addition, the Complaint alleges that the County's failure to comply with the express conditions of the HUD grants violated the Housing and Community Development Act, entitling the United States, among other things, to court-ordered relief. In an earlier order in this case, the United States District Court ruled that the County's certifications that it had acted to affirmatively further fair housing were false, and directed that a trial be held to determine if the County knew the certifications were false when it submitted them to HUD; and the damages, if any, incurred by the United States.

The Settlement

To settle the United States' claims under the Housing and Community Development Act, the County has agreed to repay \$21.6 million to the County's account with HUD. That amount, along with an additional \$30 million of County funds, will be used for the construction of 750 units of fair and affordable housing over the next seven years in areas of the County with low African-American and Hispanic populations. If the County fails to meet the terms of the settlement agreement regarding housing construction, it will become liable for penalties that require it to fund the construction of additional housing. To resolve the False Claims Act claims in the Complaint, the County has agreed to pay the United States a total of \$30 million, with a credit for the \$21.6 million repaid to the County's HUD account.

The settlement also provides that the County will change certain of its policies to

facilitate the removal of impediments to fair housing. In particular, the County will seek to eliminate municipalities' right of first refusal over land purchases made by the County to develop fair and affordable housing, and will condition the use of public funds (including HUD grants) on commitments by municipalities to implement policies that promote fair and affordable housing. The County will also undertake and fund marketing, public education, and other outreach efforts to promote fair and affordable housing.

Finally, the County's compliance with the agreement will be overseen by a court-appointed monitor. The monitor will have the authority, among other things, to review the County's programs and policies, recommend additional actions needed by the County to achieve compliance with the settlement, issue periodic reports on the County's progress, and modify certain terms of the settlement if necessitated by changed conditions. With the court's approval, the United States has selected James E. Johnson, a member of the law firm Debevoise & Plimpton, to fill the post of monitor.

United States District Judge Denise L. Cote approved the settlement today in Manhattan federal court. The settlement agreement is conditioned upon approval by the County's Board of Legislators. Following approval of the settlement, the court issued an order scheduling a trial in the case for Nov. 2, 2009, in the event that the Board of Legislators fails to provide the necessary approvals within the 45 day period provided for in the settlement.

The Whistleblower

The allegations of wrongdoing were first brought to the attention of the United States by the Anti-Discrimination Center of Metro New York, a fair-housing advocacy group, which filed a complaint as a whistleblower under the *qui tam* provisions of the False Claims Act. Those provisions permit the United States to intervene in cases originally commenced by private parties who know of fraud committed against the Government. The Anti-Discrimination Center will receive \$7.5 million as part of the False Claims Act settlement.

* * *

"Local governments that accept HUD grants undertake a serious commitment and responsibility to affirmatively further fair housing," said Acting United States Attorney Lev L. Dassin. "This groundbreaking agreement with Westchester County will ensure that hundreds of new units of housing are built to be not only affordable, but fully available throughout the community."

"Fair housing is a significant issue for this Administration," said Tony West, Assistant Attorney General for the Civil Division of the Department of Justice. "In collaboration with the United States Attorneys' offices and our other partners, the Justice Department will work to ensure that public dollars intended to affirmatively further fair housing are not being misspent."

Assistant United States Attorneys James L. Cott, Sean C. Cenawood, and Benjamin H. Torrance handled the case, with the assistance of Renee Brooker, Assistant Director of the

Commercial Litigation Branch in the Department of Justice Civil Division; Senior Trial Attorney William C. Edgar, also of the Commercial Litigation Branch; and attorneys in the Office of General Counsel at HUD.

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Attorneys for homeless shelter seek \$1.9 million from Boise for fees, costs

AP

— By The Associated Press

on October 25, 2012 at 2:28 PM, updated October 25, 2012 at 2:39 PM

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BOISE -- The **city of Boise** could see its tab for losing a lawsuit over housing for the homeless climb from \$1 million to nearly \$3 million once attorneys' fees and costs are added.

A federal jury ordered the city to pay \$1 million to **Community House** in September, after finding that the city discriminated against homeless women and children and retaliated against the organization when board members complained. Now the attorneys that represented Community House in the lawsuit are asking that their client be compensated for fees and costs -- which they say total nearly \$1.9 million.

Under federal law, the winner of a lawsuit can generally seek to recover attorney's fees and costs from the losing side. The fees and costs have to be approved by a judge and they can be appealed, just like the verdict itself. But they can substantially raise the financial stakes for the losing party.

Attorneys for the city, meanwhile, have asked **U.S. District Judge Candy Dale** to issue a judgment notwithstanding the verdict -- a legal move in which a judge can set aside a jury's finding and issue a new verdict -- or to hold a new trial. In the city's motion filed Wednesday, the city contends that the judge made mistakes during the trial and that the verdict wasn't supported by the evidence presented in the case.

In Community House's motion for attorney's fees and other supporting documents, also filed Wednesday, attorney Howard Belodoff said that he and several other attorneys and staffers with **Idaho Legal Aid Services** worked on the case over the past seven years.

Exhibit F

"Given the complexity and difficulty of the issues, the appeals, the defenses raised by Defendants, the length of time it took before a jury heard the case and contingent nature of the case, few if any attorneys would have considered representing the plaintiffs who had no resources to compensate counsel or pay the costs," Belodoff wrote in a court document.

Community House and the city of Boise worked together in the 1990s to build and run a homeless shelter and soup kitchen, funded largely through federal grants and private donations. But over time, the relationship began to unravel, and in 2003 the city began looking for a new organization to run the shelter. When Community House officials learned the city planned to partner with the **Boise Rescue Mission** -- which houses only men -- Community House filed a complaint under the **Fair Housing Act** contending that the move amounted to discrimination against the homeless women and children currently living there because it would leave them with no place to go.

The city of Boise officially entered into a lease-and-purchase agreement with the Boise Rescue Mission in 2005, passing an ordinance to make it a shelter for men only. Community House then sued in federal court, bringing a number of claims including discrimination and retaliation.

The city strongly denied those claims and the lawsuit eventually went to trial in August. After 11 days of testimony and arguments, the federal jury sided with Community House, finding the city violated the state constitution, discriminated against homeless women and children and retaliated against Community House.

The jury awarded the organization \$1 million, which Belodoff said would be used to house and provide for homeless families, women and children.

After the verdict was announced, Boise city spokesman Adam Park released a prepared statement in which the city again denied any discrimination and said the \$1 million award was without basis. The statement went on to note that even if the city were to fail in its efforts to overturn and reduce the damages, that amount would likely be covered by the city's insurance policy and not come out of taxpayer funds.

-- The Associated Press